

<b>POLICY OF THE STATE OF DELAWARE DEPARTMENT OF JUSTICE</b>	<b>POLICY # 3.9</b>	<b>PAGE NUMBER 1 of 4</b>
<b>SUBJECT: PAID EMERGENCY LEAVE</b>		
<b>APPROVED BY: AG KATHLEEN JENNINGS</b>		
<b>EFFECTIVE DATE: MAY 14, 2020</b>		

- I. AUTHORITY:** 29 Del. C. §§ 2502, 2504
- II. PURPOSE:** To provide details on available state and federal leave provisions relating to COVID-19 and the implementation of the Families First Coronavirus Response Act.
- III. APPLICABILITY:** This policy applies to all Department of Justice (DOJ) employees.
- IV. DEFINITIONS:**
- A)** Families First Coronavirus Response Act (FFCRA): federal legislation that provides paid sick leave and expanded family and medical leave for specified reasons related to the COVID-19 emergency.
  - B)** Remote Work: the use of telecommunications or computer technologies allowing the Employee to perform all or a portion of assigned duties at an alternate worksite. Some of the provisions of DOJ's Remote Work Policy# 3.8 have been waived in order to meet operational needs during the COVID-19 related State of Emergency.
  - C)** Directly Impacted by COVID-19: instructed to quarantine, self-quarantine, be monitored, isolate or self-isolate because of COVID-19 and employees at higher risk for severe illness, including: persons with compromised immune system; persons with HIV or asthma severely obese with underlying health condition; persons over 60 years of age with an underlying health condition, serious condition; or pregnant women.
  - D)** State Paid Emergency Leave (SPEL): state paid leave of absence for eligible employees who are absent for specified reasons due to COVID-19.
  - E)** Child: as defined under FFCRA, a "son or daughter", which includes your biological, adopted, or foster child, your stepchild, a legal ward, or a child for whom you are standing in loco parentis – someone with day-to-day responsibilities to care for or financially support a child; also, an adult son or daughter (i.e., one who is 18 years of age or older), who (1) has a mental or physical disability, and (2) is incapable of self-care because of that disability.

- F) Federal Emergency Paid Sick Leave (FPSL):** paid leave provided through FFCRA for eligible employees who are unable to work or unable to work remotely and require leave for their own COVID-19 health related issues, who are caring for someone with COVID-19 issues, or who need to care for a minor child due to a COVID-19-related school or child care closure.
- G) Federal Paid Emergency Leave (FPEL):** paid leave provided through FFCRA, the Emergency Family and Medical Leave Expansion Act to eligible employees who are unable to work or unable to work remotely and need to care for a child under 18 years of age due to a COVID-19-related school or child care closure.

**V. FORMS OF LEAVE:**

**A) STATE PAID EMERGENCY LEAVE (SPEL)**

The State of Delaware, in response to the COVID-19 emergency, exercised its discretion starting on March 12, 2020 to provide employees SPEL for employees, including casual/seasonal employees, who are directly impacted by COVID-19. Using the State of Delaware SPEL policy, DOJ extended the number of days available. SPEL is paid at 100% of the employee's regular earnings and may not exceed 30 work days for those who are eligible for FPEL or 41 work days for those not eligible for FPEL. SPEL is discretionary leave, not an entitlement for employees, and may be terminated at any time. If not otherwise terminated, SPEL will end when the State of Emergency for COVID-19 is lifted or December 31, 2020, whichever is sooner.

**B) FEDERAL EMERGENCY PAID SICK LEAVE (FPSL)**

Under the FFCRA, an employee may be entitled to two (2) weeks of FPSL if an employee is unable to work, including unable to remote work, because the employee:

1. is subject to a Federal, State, or local quarantine or isolation order related to COVID-19;
2. has been advised by a health care provider to self-quarantine related to COVID-19;
3. is experiencing COVID-19 symptoms and is seeking a medical diagnosis;
4. is caring for an individual subject to an order described in (1) or self-quarantine as described in (2);
5. is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons; or
6. is experiencing any other substantially-similar condition specified by the U.S. Department of Health and Human Services.

The FPSL for 1, 2, or 3 of this Subsection is paid at the employee's regular earnings up to \$511 per day and \$5,110 in the aggregate (over a 2-week period).

The FPSL for 4, 5 or 6 of this Subsection is paid at 2/3 the employee's regular earnings up to \$200 per day and \$2,000 in the aggregate (over a 2-week period).

**C) EMERGENCY FAMILY AND MEDICAL LEAVE EXPANSION ACT FEDERAL PAID EMERGENCY LEAVE (FPEL)**

The Family and Medical Leave Act (FMLA) is Federal law that entitles eligible employees of covered employers to take 12-weeks in any 12-month period of unpaid, job-protected time off for specified family and medical reasons with continuation of group health insurance coverage under the same terms and conditions as if the employee had not taken leave. The FMLA does not provide an independent source of employee leave.

The Emergency Family and Medical Leave Expansion Act (EFMLEA) amended the FMLA to:

- add a qualifying reason: to care for an employee's son or daughter whose school or place of care is closed or child care provider is unavailable due to COVID-19 related reasons; and
- expand eligibility requirements: employees only need to have been employed for 30 calendar days in order to be eligible for paid expanded family and medical leave to care for their child due to school or place of care closure or child care unavailability under the EFMLEA.

EFMLEA provides that 10 weeks of the 12-week period be paid at 2/3 of the regular rate of pay for the hours normally scheduled to work. Paid leave provided as a result of the expanded family and medical leave is referred to herein as FPEL.

EFMLEA did not extend the 12-weeks in any 12-month time period of FMLA.

Under the FFCRA, an employee may be entitled to two (2) weeks of FPSL and ten (10) weeks of paid expanded family and medical leave (FPEL) if an employee is unable to work, including unable to remote work, because the employee is caring for his or her child whose school or place of care is closed (or child care provider is unavailable) due to COVID-19 related reasons.

Employees taking FPEL may take FPSL for the first two (2) weeks of the leave period or may substitute any accrued annual or sick leave or compensatory time. For the following ten (10) weeks, employees will be paid at an amount no less than 2/3 of the regular rate of pay for the hours normally scheduled to work. Under FFCRA, employees will not receive more than \$200 per day or \$12,000 for the twelve (12) weeks that include both paid sick leave and expanded family and medical leave when on leave to care for a child whose

school or place of care is closed, or child care provider is unavailable, due to COVID-19 related reasons.

## **VI. PROCEDURES:**

Employees may be eligible for two weeks or up to 80 hours of FPSL (based on their standard weekly hours of 75 or 80 for full time and average weekly hours for part time or casual/seasonal) if they are unable to work and unable to remote work due to a need for leave for reasons identified in Subsection V. B) 1, 2, and 3 of this Policy. When taken for these reasons, the FPSL is paid at 100% of the employee's regular earnings. If the employee is hourly, overtime is included in the calculation of this pay. Any hours of FPSL or FPEL taken run concurrently with any SPEL balance and, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL, unless an alternative is requested. Employees are to request FPSL by completing the COVID-19 Federal Emergency Paid Sick Leave Form.

Employees may be eligible for two weeks or up to 80 hours of FPSL (based on their standard weekly hours of 75 or 80 for full time and average weekly hours for part time or casual/seasonal) if they are unable to work and unable to remote work due to a need for leave for identified in Subsection V. B) 4, 5, and 6 of this Policy. When taken for these reasons, the FPSL is paid at 2/3 an employee's regular earnings. Any hours of FPSL or FPEL taken run concurrently with any SPEL balance and, therefore, will be offset by a reduction of an equal number of hours of any remaining SPEL, unless an alternative is requested. Employees are to request FPSL by completing the COVID-19 Federal Emergency Paid Sick Leave Form.

Employees may supplement the 2/3 FPSL with their remaining SPEL up to 100% of his/her regular earnings. If the employee has exhausted his/her SPEL, the employee may supplement by using accumulated compensatory time, accrued sick and/or annual leave in accordance with DOJ Policy# 3.1.

Employees that have been employed for at least 30 days may be eligible for paid time off (through EFMLEA and FPEL) to care for their child (under the age of 18 years old) whose school or childcare is closed or otherwise unavailable due to COVID-19. Employees are to request FMLA, as provided by EFMLEA, by completing the COVID-19 Federal Emergency Family and Medical Leave Act Expansion Leave Request Form. The FMLA may be taken intermittently and in hour increments.